Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

DALE E. HAYDEN,

Petitioner

v.

STATE OF ARKANSAS,

Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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58 pp

QUESTION PRESENTED

WHETHER THE COURT OF APPEALS ERRED IN DENYING THE PETITIONER AN OPPORTUNITY TO PURSUE HIS HABEAS CORPUS CLAIM.

THIS IS NOT A CAPITAL CASE.

TABLE OF CONTENTS

Page

Question Presented i
Table of Contents ii
Table of Authorities iii
Citation to Opinion Below 1
Jurisdictional Statement 1
Constitutional Provisions Involved 2
Statement of the Case 3
Reason for Granting the Writ
and Argument 7
THE COURT OF APPEALS ERRED IN SUMMARILY DISMISSING THE HABEAS CORPUS PETITION
Conclusion 11
Appendix
Order of August 4, 1999
Denying Rehearing A-1
Judgment of June 2, 1999 ..... A-2
Order of April 19, 1999 ..... A-3
Order of April 1, 1999 ..... A-4
Magistrate's Report and Recommendation A-5
Judgment and Order of Probation A-8
Law Mandate from Arkansas Supreme
Court A-10
Order of July 24, 1997 ..... A-11
Order of February 12, 1997 ..... A-12
Plea and Waiver A-13
Social Security Disability Ruling A-15
Typed Statements of Petitioner A-17

TABLE OF AUTHORITIES

Page

Constitutional Provisions

Fifth Amendment, United States Constitution 2, 7

Sixth Amendment, United States Constitution 2, 7

Fourteenth Amendment, United States Constitution 2, 7

Statutes

28 U.S.C. §1254 .....1, 5

28 U.S.C. §2244 10

28 U.S.C. §2254 8

Ark. Code Ann. §16-90-111 5

Rules

Rule 22, Federal Rules of Appellate Procedure 7

Rule 37, Arkansas Rules of Criminal Procedure 5

Cases

Hoggro v. Boone, 150 F.3d 1223 (10th Cir. 1998) 10

McMann v. Richardson, 397 U.S. 759 (1970) 8

Meleng v. Cook, 109 S.Ct. 1923 (1989) 9

Miller v. New Jersey Dept. of Correction, 145 F.3d 616 (3d Cir. 1998) 10

Nix v. Whiteside, 475 U.S. 157 (1986) 8

Russell v. City of Pierre, 530 F.2d 781 (8th Cir.), *cert. den.*, 429 U.S. 855 (1976) 9
Strickland v. Washington, 466 U.S. 668 (1984) 7, 8

CITATION TO OPINION BELOW

This case is cited below as *Hayden v. Arkansas,* No. 99-2147 WA. The opinion was handed down June 2, 1999. A petition for rehearing was applied for but denied on August 4, 1999, stating it had no merit.

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254. The opinion of the Court of Appeals for the Eighth Circuit was issued on June 2, 1999. However, petitioner filed a timely request for rehearing. The petition for rehearing was denied on August 4, 1999, stating it had no merit.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution

. . . nor be deprived of life, liberty, or property, without due process of law

Sixth Amendment to the United States Constitution

. . . and to have the assistance of counsel for his defense

Fourteenth Amendment to the United States Constitution

. . . nor shall any state deprive any person of life, liberty, or property without due process of law.

STATEMENT OF THE CASE

Counsel for the petitioner has been requested to include as many facts in this petition as the petitioner viewed them. Though that is not commonly done, counsel invokes the Court's understanding and consideration of the extensive facts presented. Petitioner's own typed notes are made a part of the appendix.

The petitioner was found not guilty of a murder charge by reason of insanity in Arizona in 1980. In 1986, he became eligible to receive social security benefits due to mental impairment.

Petitioner was arrested January 5, 1989 and charged with felony terroristic threatening. The arrest was made without a warrant and with no basis. The petitioner stayed in jail from January 5, 1989 to June 29, 1989 before bond was set. He was then sent to the state hospital on October 21, 1989 for a psychological evaluation. He requested his court-appointed counsel to seek an appeal of the referral to the state hospital, but counsel failed to do so.

Petitioner was released from jail in July of 1989. Petitioner was scheduled for trial on December 14, 1989. He appeared with counsel, and his accusers were not present. He asked his attorney to move to dismiss the charges, but he did not. The claimant was ordered back to jail with a new trial date set for January 1990, even though he made bond on July 15, 1989.

The county sheriff offered the claimant two years' probation and no fine if he pled guilty at

that time. On December 21, 1989, the petitioner entered into a verbal plea agreement. The plea and waiver stated in pertinent part that "he had never been declared incompetent for any reason. . . ." Petitioner's counsel knew of his mental illness but did not inform the court or discuss the plea with the petitioner.

The petitioner received five years' probation and a $500 fine. This was different than the offer originally made. The claimant objected to counsel, but nothing was done to change the sentence. The petitioner did not plead guilty because he was promised a lighter sentence. He pled guilty because he had been incarcerated an inordinate amount of time and was mentally ill and was fearful of more jail time and was tired of being detained and tried for charges he did not commit. Counsel for petitioner never came to visit him in jail to update him on his case status or to discuss the case.

In 1992, the claimant was charged with two misdemeanors: harassing communications and disorderly conduct. He was found guilty after a bench trial in municipal court. A petition to revoke the claimant's probated sentence was filed on January 3, 1992. In May of 1992, his probation was revoked, and June 25, 1992, he was committed to the Arkansas Department of Correction on a five-year sentence for charges he did not commit. The petitioner requested counsel to appeal the misdemeanor convictions and revocation, but counsel refused. There was eventually an appeal filed concerning the revocation, but the revocation was affirmed. The petitioner served 19 months and eight days on a

five-year sentence in the Arkansas Department of Correction for charges he did not commit. When released, he had completed his sentence and was not on parole.

In 1997, the petitioner filed a motion pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure and also a petition to correct a sentence imposed in an illegal manner. Both petitions were found to be untimely and were denied. Judge Purifoy erred in dismissing the petition to correct a sentence imposed in an illegal manner as untimely. The law clearly states in Ark. Code Ann. §16-90-111—*Fixing of Punishment—Correction of Illegal Sentence—Reduction of Sentence:*

> Any circuit court, upon receipt of a petition by the aggrieved party for relief, and after notice has been served on the prosecuting attorney, may correct an illegal sentence at any time. . . .

The petitioner then filed a belated appeal with the Arkansas Supreme Court, and it was summarily denied in June of 1998.

The petitioner filed a habeas corpus petition pursuant to 28 U.S.C. 2254 in December of 1998. The district court, adopting the magistrate's report, found that the petition should be dismissed because the petitioner was not "in custody" and it was untimely. No hearing was ever held by the district court on the petitioner's claims. That order was appealed to the Circuit Court of Appeals for the Eighth Circuit. The

Eighth Circuit denied the petitioner a certificate of appealability and dismissed the appeal on June 2, 1999. A timely petition for rehearing was filed and denied on the merits on August 4, 1999.

The gist of the petitioner's claim is that he was denied effective assistance of counsel at all levels, in 1989, 1992 and in his revocation proceeding. This is especially true in the 1989 charges, where he was coerced to plead guilty. He was compelled by counsel to perjure himself. The plea agreement specifically asks about mental illness. His counsel at the time knew of his mental condition but did not raise it. It calls the complete plea into question.

Further, had petitioner received the initial plea offered, he would have been off probation when the 1992 charges were filed, and he would not have been subject to revocation. Without a hearing being granted for the petitioner at the district court level, he has not had an opportunity to present his evidence. Ineffective assistance of counsel can only be established if the petitioner is given that opportunity. The petitioner will present his legal argument in the next section. From the decision of the Eighth Circuit, Hayden brings this petition for certiorari.

REASONS FOR GRANTING THE WRIT AND ARGUMENT

THE COURT OF APPEALS ERRED IN SUMMARILY DISMISSING THE HABEAS CORPUS PETITION

The issue presented on certiorari is a request to require the Court of Appeals to reconsider its decision to dismiss the habeas corpus petition. The Court of Appeals denied an application for a certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. The Court of Appeals did not issue a written decision, only an order of dismissal. The district court adopted the report and recommendation of the magistrate who was originally assigned the case. There were two issues the magistrate addressed, the first being subject-matter jurisdiction, and the second being timeliness. The gist of the claim of petitioner is that he was denied effective assistance of counsel. Since the Court of Appeals did not list its reasons for denying the appeal, the issues will be addressed below.

Effective Assistance of Counsel

The petitioner contends that he was denied his constitutional protections pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. By errors committed by his counsel at the state court level, the claimant was denied due process of law and effective assistance of counsel. In *Strickland v. Washington,* 466 U.S. 668 (1984), this Court identified what the standard is for effective

representation. Citing *McMann v. Richardson,* 397 U.S. 759 (1970), this Court recognized that right to counsel is the right to "effective counsel." *Id.* at 771. The Court went on to state that to find counsel ineffective, he must have committed errors and that those errors resulted in prejudice to the defendant. *Strickland* at 695. This standard was reconfirmed in *Nix v. Whiteside,* 475 U.S. 157 (1986). *Nix* dealt with an attorney instructing his client not to commit perjury. The client did not perjure himself but contended later that, had he been able to testify as he wanted, the outcome of his trial would have been different.

Nix is significant because it found that counsel's actions were proper. By contrast, the petitioner's counsel in his 1989 guilty plea encouraged him to commit perjury. His written plea stated he had not had a history of mental illness. Counsel for petitioner knew of his mental illness. Counsel's actions betrayed the petitioner and the court. That renders his representation ineffective. The statement of the case and the appendix to this petition clearly detail the errors committed by counsel, and petitioner clearly has been prejudiced.

Subject-Matter Jurisdiction

The district court held that there was not subject-matter jurisdiction to hear the habeas corpus claim because the claimant was not "in custody" pursuant to 28 U.S.C. §2241(3). To pursue a claim for habeas corpus relief, one must be "in custody." At the time the petitioner filed his claim for habeas relief under 28 U.S.C. §2254, he had actually completed the sentence he was

attacking and was not on parole. The courts have held that actual "custody" is not required to seek habeas corpus relief. The district court cites *Russell v. City of Pierre, S. D.,* 530 F.2d 791 (8th Cir.), *cert. denied,* 429 U.S. 855 (1976), in support of that position, In *Russell,* the Court stated that, "in order for the requirement to be met, there must be a significant restraint imposed on one's liberty." (Other cites omitted.) This Court addressed the issue of "custody" in *Meleng v. Cook,* 109 S.Ct. 1923 (1989). This Court ruled that "in custody" has not required that a petitioner be physically confined in order to challenge his sentence. *Id.* at 1925.

This issue is whether the effects of a felony conviction are such as to create a significant restraint. The petitioner, due to his conviction, is not able to vote or own a firearm and can not engage in certain professions. He has become a second-class citizen. These are significant restraints on his freedom. The petitioner wishes to clear his name and can do so only by attacking his unconstitutional conviction.

The petitioner's mental condition plays a major role in this matter. Had he been competent (an issue that has not yet been explored), he would have filed his claim for habeas corpus relief while he was incarcerated. He was unaware, due to his condition, to appreciate the need to do so.

Timeliness

The district court also found that, even if subject-matter jurisdiction existed, the petition was untimely. There was an amendment to the

habeas corpus provision in 1996 that limited the period of time in which a petition could be filed. The provision was under the Antiterrorism and Effective Death Penalty Act of 1996. That provision set a statute of limitation for one year from "the date on which the judgment became final by the conclusion of the direct review or the expiration of the time for seeking such review." 28 U.S.C. §2244(d)(1). The petitioner's attempts to have his conviction overturned by the courts in Arkansas should be included before the one-year period begins to run. *See, Hoggro v. Boone,* 150 F.3d 1223, 1226 (10th Cir. 1998). The petitioner's last ruling from the Arkansas courts was in June of 1998. That was when his attempt to file a belated appeal was denied. He filed his habeas corpus petition in December of 1998. That was within the one-year period set by the amendment.

Assuming, *arguendo,* that the belated appeal filing does not toll the statute of limitation, it is still subject to equitable tolling. The petitioner is mentally ill. That should be a basis for equitable tolling. In *Miller v. New Jersey Dept. of Corrections,* 145 F.3d 616 (3d Cir. 1998), the court, when dealing with this limitation held that "time limitations analogous to a statute of limitations are subject to equitable tolling." *Id.* at 617. The court held also that the amendment was statute of limitation, not a jurisdictional bar. The petitioner again states that he suffers from mental illness and, as such, that should be a basis for equitable tolling.

CONCLUSION

Petitioner respectfully prays that this Court grant certiorari and order the Court of Appeals to hear his appeal.

Respectfully submitted,

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APPENDIX

Order of August 4, 1999 Denying Rehearing

United States Court of Appeals
for the Eighth Circuit

No. 99-2147WAT

Dale E. Hayden, Appellant,
vs.
State of Arkansas, Appellee.

Appeal from the United States District Court
for the Western District of Arkansas

Appellant Hayden's motion for permission to file an amended petition for rehearing has been considered by the Court and is granted. The petition is denied on the merits.

(5193-010199)

August 4, 1999

Order Entered at the Direction of the Court:
S/MICHAEL E. GANS
Clerk, U.S. Court of Appeals, Eighth Circuit

Judgment of June 2, 1999

United States Court of Appeals
for the Eighth Circuit

No. 99-2147WAT

Dale E. Hayden, Appellant,
vs.
State of Arkansas, Appellee.

Appeal from the United States District Court
for the Western District of Arkansas

JUDGMENT

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. In light of Mr. Hayden's payment of the filing fee and the appearance of his retained counsel, Mr. Hayden's in forma pauperis application and request for counsel are denied as moot. The appeal is dismissed.

(5361-010199)

June 2, 1999

Order Entered at the Direction of the Court:
S/MICHAEL E. GANS
Clerk, U.S. Court of Appeals, Eighth Circuit

Order of April 19, 1999

In the United States District Court
Western District of Arkansas
Texarkana Division

Dale Hayden, Petitioner
v. Civil No. 98-4142
State of Arkansas, Respondent

Order

NOW on this 19 day of April, 1999, comes on for consideration petitioner's motion for certificate of appealability (document #11) and petitioner's application to proceed in forma pauperis (document #12) filed on April 12, 1999, and the Court, being well and sufficiently advised and believing that petitioner's grounds for appeal are frivolous, finds that the motion for certificate of appealability and application to proceed as a pauper should be, and they hereby are, denied.

IT IS SO ORDERED.

S/JIMM LARRY HENDREN
United States District Judge

Order of April 1, 1999

Dale Hayden, Petitioner
v. Civil No. 98-4142
State of Arkansas, Respondent

ORDER

NOW on this 1 day of April, 1999, comes on for consideration the Report and Recommendation of United States Magistrate Judge Bobby E. Shepherd (document #8) filed on March 22, 1999, and the Court, being well and sufficiently advised that there has been no objection by any party, finds that the Report and Recommendation should be, and hereby is, adopted and petitioner's claim pursuant to 28 U.S.C. 2254 dismissed for lack of jurisdiction. *See Russell v. City of Pierre, S. D.,* 530 F.2d 791, 792 (8th Cir.), *cert. denied,* 429 U.S. 855 (1976). The Court further finds that had jurisdiction been proper, petitioner's claim should be dismissed as untimely. *See* U.S.C. 2244(d)(1)(A).

IT IS SO ORDERED.

S/JIMM LARRY HENDREN
United States District Judge

Magistrate Report and Recommendation

Dale Hayden, Petitioner
v. Civil No. 98-4142
State of Arkansas, Respondent

MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION

Dale Hayden filed this action on December 18, 1998, seeking habeas corpus relief under 28 U.S.C. §2254. Hayden named as the respondent the State of Arkansas, and we now determine whether Hayden's petition should be served upon the respondent or summarily dismissed.

In his original petition and supplements thereto, Hayden indicates that in December 1989, more than nine years ago, he was convicted, pursuant to a guilty plea, in Nevada County Circuit Court of terroristic threatening and was sentenced to five years probation and a fine. In May 1992, Hayden's probation was revoked, based on misdemeanors he had been convicted of a few months prior, and he was committed to the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed Hayden's probation revocation in February 1994, by which time, Hayden had been released from custody. As Hayden had completed his sentence, he was not put on parole when released.

In February 1997, Hayden filed a petition under Arkansas Rule of Criminal Procedure 37 and a "Petition to Correct a Sentence Imposed in an Illegal Manner," the former of which was ruled untimely in February 1997, and the latter of

which was likewise ruled untimely in July 1997. Hayden subsequently filed a motion for a belated appeal with the Arkansas Supreme Court, and this motion was denied without comment in June 1998.

In Hayden's current section 2254 petition, he appears to assert that he was denied effective assistance of counsel when he entered his guilty plea to terroristic threatening in 1989. Hayden also asserts that he was denied due process when the state circuit court and supreme court denied without hearing his petitions for collateral relief and his motion for a belated appeal.

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides, "If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal. . . . Otherwise, the judge shall order the respondent to file an answer. . . ." We conclude that Hayden's petition is subject to summary dismissal.

To invoke the habeas corpus jurisdiction of the federal courts, a petitioner must be "in custody." 28 U.S.C. §2241(c). Hayden indicates that he has not been in actual custody since February 1994 and is not on parole. While the custody requirement may nevertheless be satisfied if there remains a "significant restraint" on Hayden's liberty, *see Russell v. City of Pierre, S. D.*, 530 F.2d 791, 792 (8th Cir.), *cert. denied*, 429 U.S. 855 (1976), Hayden has not identified any such restraint. We therefore conclude that

Hayden's habeas corpus petition is subject to dismissal for lack of subject matter jurisdiction.

We note that even if jurisdiction did lie over Hayden's petition, the petition would be subject to dismissal as untimely. Hayden had one year from the date on which his judgment of conviction "became final by the conclusion of direct review or the expiration of the time for seeking such review" in which to file his section 2254 petition. 28 U.S.C. §2244(d)(1)(A). The Arkansas Court of Appeals affirmed Hayden's conviction in February 1994. Thus, well over four years elapsed from the conclusion of direct review of his conviction to when he filed his section 2254 petition in this court in December 1998. Hayden's belated attempts to seek collateral review in the circuit court and to appeal to the Arkansas Supreme Court did not toll the limitations period. *See Cromwell v. Keane,* 1999 WL 39055, *3 (S.D. N.Y. Jan. 12, 1999).

Based on the foregoing, we recommend that Hayden's section 2254 petition be dismissed. Hayden has ten days from receipt of our report and recommendation in which to file written objections pursuant to 28 U.S.C. §636(b)(1). The failure to timely file objections may result in waiver of the right to appeal questions of fact. Hayden is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 22nd day of March 1999.

s/BOBBY E. SHEPHERD
United States Magistrate Judge

Judgment and Order of Probation

In the Circuit Court of Nevada County, Arkansas

State of Arkansas
vs. CR-89-1-3
Dale Edward Hayden
a/k/a Dale Hayden

JUDGMENT AND ORDER OF PROBATION

On this 21st day of December, 1989, came the State of Arkansas by Danny P. Rodgers, Deputy Prosecuting Attorney, and the Defendant, Dale Edward Hayden a/k/a Dale Hayden, appeared in person with his attorney, Eugene B. Hale Jr., and DEFENDANT'S RIGHTS, CHARGES AND PENALTY FULLY EXPLAINED. DEFENDANT STATES HE UNDERSTANDS COURT'S EXPLANATION AND ENTERS PLEA OF GUILTY. PLEA OF GUILTY ACCEPTED. DEFENDANT PLACED ON 5 YEARS OF PROBATION, SUPERVISED, $500 FINE PLUS COURT COST. ATTORNEY'S FEE OF $150.00 ALLOWED.

IT IS ADJUDGED that the defendant has been convicted upon his plea of GUILTY of the offense of TERRORISTIC THREATENING IN THE FIRST DEGREE in violation of Section 5-13-301 of the Arkansas Statutes as charged.

AND THE COURT having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUGED that the defendant is placed on probation of FIVE (5) years under the supervision of ADULT PROBATION OFFICER, and under such regulations as may be prescribed by the Supervisor of Probations. The Court retains jurisdiction of this mater and the plea of guilty is taken under advisement.

s/CHARLES WALKER
Circuit Judge

Law Mandate from Arkansas Supreme Court

State of Arkansas
In the Supreme Court

BE IT REMEMBERED, That at a session of the Supreme Court of the State of Arkansas, begun and held in the City of Little Rock, on the 4th day of June, 1998, amongst others were the following proceeding, to-wit:

No. CR 98 00625

Dale Hayden, Appellant
vs. Appeal from Nevada Circuit-(CR89-1-3)
State of Arkansas, Appellee

Motion for belated appeal is denied.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case herein stated, I, Leslie W. Steen, Clerk of said Supreme Court, hereunto set my hand and affix the seal of said Supreme Court, at my office in the city of Little Rock, this 4th day of June, 1998.

s/LESLIE W. STEEN, *Clerk*

Order of July 24, 1997

Dale Hayden, Plaintiff
vs. No. CR 89-1-3
State of Arkansas, Defendant

ORDER

ON THIS THE 24 day of July 1997, came on to be heard the defendant's Rule 37 Petition file-marked February 3, 1997; and

INASMUCH as the Plaintiff was sentenced on May 7, 1992 and the Rule 37 Petition was not filed until February 3, 1997.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the Defendant's Rule 37 Petition is not timely filed and will not be considered by this court.

IT IS SO ORDERED this 24 day of July, 1997.

s/ PHILIP PURIFOY
CIRCUIT/ CHANCERY JUDGE

Order of February 12, 1997

In the Circuit Court of Nevada County, Arkansas

State of Arkansas, Plaintiff
vs. No. CR-09-001-3
Dale Hayden, Defendant

ORDER

ON THIS THE 12 DAY OF FEB 1997, came on to be heard the Defendant's Petition to Correct a Sentence filed by above defendant; and

Whereas, said Defendant was sentenced on 5-7-92 and said petition was file-marked 2-3-97;

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that said Petition to Correct a Sentence is not timely filed and will not be considered by this court.

IT IS SO ORDERED this 12 day of Feb, 1997.

s/PHILIP PURIFOY
Circuit/Chancery Judge

Plea and Waiver

In the Circuit Court of Nevada County, Arkansas

State of Arkansas
vs. CR 89-1-3
Dale Edward Hayden

PLEA AND WAIVER

Comes now the defendant and states:

1. That he has received a copy of the charge(s) against him herein and, after discussing the same and the consequences of a plea of guilty to such charge(s) with his attorney, understands the nature of the charge(s) against him and the possible consequences of a conviction thereon.

2. That he is not innocent of said charge(s) against him, did in fact commit the crime(s) with which he is charged and is guilty thereof beyond every reasonable doubt.

3. That he disclosed to his attorney the names and addresses of all persons known who could testify in his behalf, assisted his attorney in preparing his defense to the charges herein and related to his attorney all matters in mitigation.

4. That no promises, representations or threats have been made to or against him by anyone to induce or cause him to enter a plea of guilty to the charges herein.

5. That, by entering a plea of guilty herein, he waives and gives up (a) his right to persist in a

plea of not guilty, (b) his right to remain silent and not to testify against himself, (c) his right to be confronted with witnesses against him and to cross-examine such witnesses under oath, (d) his right to compel witnesses to testify in his behalf, (e) his right to a jury trial to determine his guilt, (f) his right to appeal his conviction herein and (g) any and all objections to the proceedings therein against him.

6. That he acknowledges (a) that he is satisfied with the advice given him by his attorney, (b) that his attorney acted diligently and competently in representing him herein and (c) that the court is not bound by any recommendation, if any, made by the Prosecuting Attorney or by the Probation Officer and is completely free to fix and assess such punishment as in the court's discretion seems appropriate subject only to the maximum sentence prescribed by law.

7. That he has never been declared mentally incompetent for any reason, is not under the influence of alcohol or drugs and does not need or require psychiatric treatment.

WHEREFORE, defendant requests that this plea of guilty to the charges herein be accepted and that such sentence herein be pronounced or imposed as the court now deems fit, proper and just.

s/DALE HAYDEN, *Defendant*

CONCURS:
s/EUGENE B. HALE JR., *Defendant's Attorney*

Social Security Disability Ruling

Social Security Administration

Date: May 6, 1999
Claim Number: 449-88-2499A
449-88-2499DI
Name: DALE HAYDEN

Dale Hayden
333 East 7th Street
Prescott AR 71857-2277

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Current Social Security Benefits

Beginning December 1998, the full monthly Social Security benefit before any deductions is $790.40.

We deduct $0.00 for medical insurance premiums each month.

The regular monthly Social Security payment is $790. (We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third of each month.

Other important information

MR. HAYDEN WAS ENTITLED TO SOCIAL SECURITY DISABILITY ON 07/86.

If you have any questions, you may call us at 1-800-772-1213, or call your local Social Security office at 903-792-3818. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

Social Security
Howard Plaza
1614 Hampton Road
Texarkana, TX 75503

If you do call or visit an office, please have this letter with you. It will help us answer your questions.

s/CARMEN SIGER, *Office Manager*

Typed Statements of Petitioner

October 30, 1999

HAYDEN BELIEFS HIS HABEAS CORPUS FORM 2254 PETITION DESERVES MERITS FOR THE FOLLOWING REASONS: HAYDEN PRAY THE COURTS WILL GRANT HIM PERMISSION FOR A WRIT OF CERTIORARI FOR THE FOLLOWING REASONS:

MERITS

MERITS TO THE 1989, CHARGE TERRORISTIC THREATENING ARK. CODE ANN. SEC. 5-13-301, AND MERITS TO THE MISDEMEANOR ALLEGATIONS DISORDERLY CONDUCT, ARK. CODE SEC. 5-71-207, AND HARASSING COMMUNICATION, ARK. CODE ANN. SEC. 5-71-209 IN 1992.

1. Petitioner was arrested on January 5, 1989, without a warrant for arrest. To arrest without a warrant is illegal arrest.

2. Petitioner was held in jail from January 5, 1989, until January 17, 1989, before being arraigned. The law clearly states: "The law has 72 hours to arraign you, or a person," that's 12 days from January 5, 1989, until January 17, 1989, of unlawful arrest, and of being held unlawful for some charges petitioner did not commit.

3. The accusers were not at petitioners January 17, 1989 arraignment. The law clearly states, "A person has the right to face accusers as part of Due Process of Law." That's Denial of Due Process of Law. Not being able to face your accusers.

4. Petitioner pleaded not guilty on January 17, 1989, on his day of arraignment because petitioner was not guilty, and accusers were not present, and the accusers should have been present on January 17, 1989, because accusers did not know petitioner was going to plead not guilty.

5. Petitioner was held from January 5, 1989 until June 29, 1989 before petitioners attorney requested a bond be set, from January 5, 1989, until June 29, 1989 that's about six (6) months of being held with illegal arrest, and of having being locked down in jail for some charges petitioner did not commit, and of being held without a bond for six (6) months, by the request of the prosecutor, for some charges petitioner did not commit.

6. Petitioner was ordered for a 30 day Examination in the state hospital by the request of the prosecutor, Mr. Danny Rodgers against petitioners wishes.

7. Petitioner asked his attorney Mr. Hale to help him file an appeal against the judge ordering Mr. Hayden to the state hospital for a 30 day examination for some allegations petitioner did not commit, but Mr. Hale would not.

8. To hold petitioner for six (6) months is too long to hold a person without granting him a bond for some charges petitioner did not commit.

9. Petitioner was released from jail on bond on July 15, 1989.

10. Petitioner returned to court on December 14, 1989 and pleaded not guilty, and accusers again was not present at this hearing, petitioner believe that the allegation should have been dismissed at this time because the accusers did not know petitioner was going to plead not guilty.

11. Petitioner believes the allegation (Terroristic Threatening) should have been asked to be dismissed by the request of his attorney. This is petitioner's second appearance before the courts and the accusers were not present. That's denying the petitioner the right to face his accusers. Please read Exhibit "J."

12. On December 14, 1989, petitioner was ordered back to jail by the request of the prosecutor, and he knew the accusers were not there, but Mr. Rodgers recommended I be locked back up after I had made bond on July 15, 1989, and had, had my 30 day examination at the state hospital, and had been released, and set a pre-trial day January 18, 1998, and Trial date January 21, 1990, that's three more extra days in jail for some charges petitioner did not commit.

13. On the afternoon of December 14, 1989, Sheriff Abb Morman promised petitioner he would receive two years probation, no fine and he could get out of jail if petitioner plead guilty. Petitioner decided to plead guilty and accept the two years probation, and no fine just to get out of jail.

14. Petitioner has witnesses the Sheriff Abb Morman promised him two years probation, and no fine. His attorney Mr. Hale never came to jail to

see petitioner to discuss, or counsel, or advice petitioner about anything, not even his rights. Mr. Hale never discussed the plea agreement with me. The sentence I received five years probation, a $500.00 dollar fine, plus court cost.

15. Petitioner believes his attorney Mr. Hale should have been competent, and diligent, and should have been the one to discuss a plea agreement with petitioner instead of the sheriff.

16. The doctor that examined me in 1989, Dr. Simon, should have been present on December 14, 1989, because he did not know I was going to plead not guilty. The law clearly states, "but if the defendant was committed to the state hospital, it's doctors would be required to report and appear as witnesses as to the defendants guilt," *Turner v. State,* 224 Ark. 505, 275 S.W.2d 24 (1955).

17. On December 21, 1989, petitioner attorney caused or induced petitioner to perjure himself by signing the plea and waiver form and to admit that "he has never been declared mentally incompetence for any reason, is not under the influence of alcohol, or drugs and does not need or require psychiatric treatment."

18. On December 21, 1989, petitioner received five years probation, a $500.00 fine, plus court cost by the request of the prosecutor after petitioner had agreed to accept two years probation, and no fine, petitioner thought, is what the then Sheriff Abb Morman promised him. That's what makes petitioner exhibit "A" his petition to correct a sentence imposed in an illegal

manner pursuant to Ark. Code Ann. Section 16-90-111, Act 431 of 1983. The law clearly states, "Any circuit court upon receipt of petition by the aggrieved party for relief and after notice of the relief has been served on prosecuting attorney, may correct an illegal sentence at any time." *Cooner v. State,* 289 Ark. 265, 711 S.W.2d 462 (1986). Please read Exhibit "K."

19. On December 21, 1989, petitioners attorney failed to use the obvious defense of voluntary intoxication. The law clearly states, "Because Terroristic Threatening requires a purposeful mental state, the defense of voluntary intoxication is available to a defendant charged with such crime." *Davis v. State,* 12 Ark. App. 79, 670 SW.2d 472 (1984). Please read Dr. Simon report. It states, "He did admit that he was drinking about a case of beer a week during the time leading up to the alleged incident."

20. The record clearly established that petitioner is mentally ill, and petitioner attorney failed to use the obvious defense of not guilty by reason of insanity to help petitioner in his defense and vindicate the allegation against Mr. Hayden.

21. Petitioner did not plead guilty to the charge Terroristic Threatening in 1989, because he was guilty on December 21, 1989, or for a lighter, or lessor sentence. Petitioner decided to go ahead and plead guilty on December 14, 1989, after petitioner was ordered back to jail on December 14, 1989. Petitioner made "Bond on July 15, 1989, and had been released from the state hospital on November 20, 1989.

22. Petitioner decided to plead guilty for the following reason:

1. The Sheriff then Abb Morman in 1989, promised Mr. Hayden two years probation, and no fine, and Mr. Hayden would get out of jail.

2. Petitioner was unhappy with the way the state was detaining him Unlawfully, and trying petitioner for allegation petitioner Did not commit.

3. Petitioner was held in custody without bond for six (6) months, from January 5, 1989, until July 15, 1989, when petitioner made bond.

4. When petitioner returned to court on December 14, 1989, and Pleaded not guilty, and the accusers were not present, Petitioner did not understand why he had to return back to Jail when petitioner had made Bond, been examined by Dr. Simon at the state hospital, and had been released, and the accusers were not present. However, petitioner was constantly being held in custody and being tried unlawfully. The law clearly state, "Whether a person has received due process of law can only be determined on a case-by-case basis. In all criminal cases, however, it involves at the very least, the right to be heard by a fair and impartial tribunal, the defendant's right to be represented by counsel, the right to cross-examine witnesses against him." You can not cross-examine witnesses against

you if they are not present. The right to be represented states, "A person has the right to offer testimony on his own behalf, and the right to have advance notice of trial and of the charge sufficient in detail and in point of time to permit adequate preparation for trial. Due process requirements for criminal prosecutions are considerably more rigorous than those for civil cases." "Due process of law is guaranteed by both the Fifth Amendment and the fourteenth Amendment."

5. My attorney never presented me any documents, and neither did the state, or county. No one informed me in advance of my trial dates. Petitioner contend his court appointed attorney Mr. Hale never came to jail to discuss advice, or counsel him or to prepare for trial. Petitioner contend when he would find out about his trial would usually be on the day of his trial. Then a jail Trustee would come and tell him "Mr. Hayden get ready for trial. You go to trial today."

6. As for as his Rule 37 petition, you will address later.

7. The law clearly states, "A person is Innocent until proven Guilty." If your accusers do not appear a person should not Be tried, and held in custody, and a person should not be promised something to coerce him into pleading guilty, and then receive a different sentence than what was agreed upon, or promise him, with the then

Sheriff Abb Morman negotiating. Petitioners plea agreement instead of his court appointed attorney Mr. Hale, and the fact that Mr. Hayden received five years probation, a $500 fine, plus court cost instead of the two years probation, and no fine promised by the Sheriff is what makes petitioners Exhibit "A" which is "Petition to Correct a sentence imposed in an illegal manner pursuant to Ark. Code Ann Section 16-90-111. FIXING OF PUNISHMENT-CORRECTION OF ILLEGAL SENTENCE-REDUCTION OF SENTENCE." Any circuit court, upon and after notice of the relief has been served on the prosecuting attorney, may correct an illegal sentence at any time." Which simply means there is no statute of limitations on filing that petition. Therefore, Judge Purifoy decision to dismiss petitioners petition to correct a sentence imposed in an illegal manner pursuant to Ark. Code Ann. Section 16-90-111, Act 431 of 1983, as untimely should be reversed. Judge Purifoy dismissed petitioners Exhibit "A" and exhibit "B" as untimely without a hearing.

8. On December 21, 1989, petitioner received five years probation A $500 fine, plus court cost by the request of the prosecutor. It was not the judge. Petitioner received a different sentence than the two years probation, and no fine the then Sheriff Abb Morman promised him.

9. Petitioner contends he was Innocent of said allegation, and that he was not guilty of the allegation, Terroristic

Threatening in 1989. Petitioner contends the constant lock down, or being in custody for six (6) months for some allegations he did not commit, and after having to return back to jail on December 14, 1989, and remain in jail until January 21, 1990, for a trial date, for a allegation petitioner did not commit, and the accusers never appeared, plus the promise the then Sheriff Abb Morman promised.

10. Petitioner contends it was not that he was guilty is what led to his pleading guilty, neither was it for a lessor sentence. It was the way the state went about getting their conviction. It was the way the prosecution was obtained, and the way the conviction was obtained. Had petitioner been granted the right to remain free on Bond on December 14, 1989, and the prosecutor Mr. Danny Rodgers set a trial date January 21, 1990. Since petitioner had made bond on July 15, 1989, and after having received his 30 days examination in the state hospital and had been released from the state hospital on November 20, 1989. Had petitioner been granted the right to remain free on bond until his new trial date January 21, 1990, petitioner contends he never would have pleaded guilty to a charge he did not commit, it certainly was not for a lessor sentence, neither was it because petitioner was guilty. It was because petitioner was tired of being constantly locked down and tired of being tried by the courts for some allegations he did not commit, and his court appointed

attorney certainly did not act competent, and diligent in helping petitioner in proving his innocence, and the accusers never appeared at any of petitioners court hearing.

11. Petitioners attorney caused petitioner to perjure himself again on December 21, 1989, by telling petitioner "the Judge is going to ask you" "are you guilty because you are guilty because you are guilty?" "And you are going to have to say "yes." Otherwise, I would have told the judge "no, I am not guilty." Petitioner attorney told him the judge is going to ask you "did someone promise you something or co-erce you into pleading guilty?" "And you are going to have to say "no." Petitioner asked his attorney why is that and Mr. Hale stated, "You will have to do that otherwise remain in jail or go back to Houston?"

12. If petitioner attorney had not told him that the judge, Judge Walker was going to ask those two question. Well, when Judge Walker ask me, "Was I pleading guilty because I was guilty?" I would have told him "no." Then maybe he would have asked me, then why are you pleading guilty? I would have told him "because Sheriff Abb Morman promised me two years probation, no fine, and I could get out of jail?" And I would have told Judge Walker, "I was tired of being locked down and being tried for some charges I did not commit."

23. Please read Exhibit "L" Dr. Simon Ph.D. psychologist's reports. Please read official version of offense, and defendants' version of offense. It states, "When Mr. Hayden was asked about the alleged charge against him, he stated, "They said I'm charged with Terroristic Threatening, meaning no one had presented me any document, **"but I hadn't threatened no one."** "When asked to give his version of what happened, he explained "that he stopped at the convenience store to get himself two drinks." "He states that he went up to the counter to pay for the drinks and one of the ladies asked him if he bought any gas, to which he replied, "No." He states "that he paid for the drinks and walked out of the store without incident." "He states that a couple of days later, the police came and arrested him." And that is the truth, so help me God. When I say "I hadn't threatening no one "whatelse could petitioner say when petitioner contend he had not threaten no one. Mr. Hale the petitioner attorney did not discuss Dr. Michael Simon Ph.D. report with Mr. Hayden. Read *Turner v. State,* 224 Ark. 505, 275 S.W.2d 24 (1955),

24. On December 21, 1989, petitioner was placed on five years probation, a $500.00 fine, plus court cost instead of the two years probation, no fine like the then Sheriff Abb Morman promised petitioner. After serving about two years probation on the five years probation, on January 3, 1992, petitioner was charged with two misdemeanors. The charges were Disorderly Conduct, and Harassing Communication. Ark Code Ann Section 5-71-207, and Ark Code Ann Section 5-71-209.

25. Petitioner was found guilty by the judge in municipal court by Judge Duncan Culpepper. Mr. Hale was appointed counsel again for petitioner. Mr. Hayden was found guilty with only one witness for the state on April 1992.

26. Petitioner asked his attorney to file him an appeal to the courts in April 1992. After being found guilty in municipal court, to the circuit court before his Revocation hearing, and his attorney would not file the petitioners appeal before his Revocation hearing and petitioner and his attorney knew petitioners probation could be revoked. That is not abiding by a client's decision.

27. Petitioner attorney let the state find petitioner guilty on something like **"accuser thought"** was intended but din not happen and were not petitioners intention in 1992.

28. Would it help our petition if we changed the respondent from the State of Arkansas? To the Nevada County Sheriff Department and the Prescott Police Department and my court appointed attorney, Mr. Eugene B. Hale since the Rule 37 petition is allegedly ineffective assistance of counseling, or is it because my then attorney Mr. Eugene B. Hale was the public defender, paid by the state, or county, or whomever. And the sheriff and the arresting police chiefs from the Prescott Police Department in 1989 and in 1992. Chief Gary Grey in 1989, (deceased) and Police Chief William Latin (retired), I guess this is what Mr. Walker needs to decide. Magistrate Judge Bobby E. Shepherd sent Mr. Madden an order asking Mr. Madden to address that issue but Mr. Madden let my case be dis-mised and did not

answer Judge Shepherd order. That was one order, alone with some other orders Mr. Madden let my Habeas Corpus or my form 2254 petition be dismissed without addressing. Please notice form 2254 petition on page 2. Notice no respondent is listed. I found where Mr. Madden name the respondent as the State of Arkansas.

29. Please read Exhibit "O," and Exihibit "P." Please read the affidavit for warrant of arrest that is attached to Exhibit "O." It states, "On January 1, 1992, Dale Hayden came to the Red-E Mart where I was working after being requested by the city police department to not come to the store, placed his hand in his groin area and "asked me to go to the bathroom with him," which I did not. Please read Exhibit "P" Mrs. Betty Gilleylen testimony. It states under direct examination. Betty Gilleylen is a witness for the state. "My name is Betty Gileylen. I live in Prescott, Arkansas. On January 1st of this year I was employed at Red-E Mart. Dale Hayden came in the store. I wasn't sure what he was saying the first time he came in. He put his hands down between his legs and was saying bathroom and moving his head like this. I finally realized what he wanted. **"I thought"** he wanted to know where the bathroom was. He kept saying bathroom and moving his head like he was trying to get me to go back there with him. I got scared. I worked my way out of the store because I was scared of him. "I didn't call the police at that time." Yes, she did, that's when Officer Spearman told me, or Mr. Hayden not to come back to the store. And I did not go back. Doing your head like this is not the same as asking, is it? That's where the problem starts she says **"she thought"** "he wanted to

know where the bathroom was." He kept saying bathroom and moving his head like this

30. Mrs. Gilleylen was the states only witness and that is what Mrs. Gilleylen **"thought,"** and proof can be put on, that even if what did happen the way Mrs. Gilleylen stated is not what was intended. That is what Mrs. Gilleylen **"thought."** You can stop someone from thinking, but do you prosecute a person on what someone thought, or do you prosecute someone for what actually happen?

31. As for the telephone calls I have never called the Red-E-Mart store, an without a tape recorder or a tracer, no one can prove that I made the telephone calls. Petitioner contend he was innocent in 1992, of the allegation Disorderly Conduct, and Harassing Communication. Please read Dr. Rago report dated February 24, 1992. Please read **Defendant's version of the alleged offense on page 2.** Mr. Hayden "denies that he committed any offense stating "I'm charged with disorderly conduct, and harassing communication," "and I'm not guilty of any of these charges." "He indicated that he was stopped by Chief Latin of the Prescott Police Department on January 3, 1992 at approximately 8:00-8:30 in the morning." Mr. Hayden stated that "The chief told him that this was a trumped up charge and he handcuffed me and took me to jail." What was petitioner to do? Perjure himself again and tell a lie, and say that he did not commit the allegations. Petitioners attorney did not discuss neither of the doctors report with him, and the then Prescott Police Chief William Latin was not summons to testify in any of the petitioners trials.

32. In 1992, the allegations were Disorderly Conduct, and Harassing Communication. Mrs. Gilleylen states under direct examination. "He put his hand down between his legs, and was saying bathroom, and moving his head like he was trying to get me to go back there with him. I got scared." She did, or never said I asked her like the Affidavit for Warrant of Arrest states, she stated, "He put his hands down between his legs, and was saying bathroom." Why she could not have thought I was in a tight and needed to use the bathroom? She stated "and kept doing his head like this." She stated "I finally realized what he wanted. "I **thought**" he wanted to know where the bathroom was. He kept saying bathroom and moving his head like he was trying to get me to go back there with him. I got scared." Notice she said **I thought.** If petitioner was doing his head like this, then why could not Mrs. Gilleylen have thought petitioner was trying to work a crook-out of his neck from a bad nights sleep, or perhaps trying to pop his neck. If petitioner did what Mrs. Gilleylen said or accused him of, it did not have to be what she thought or that may not have been petitioner intent. Mrs. Gilleylen have never testified that I asked her to go to the bathroom with me. Please read Affidavit for Warrant of Arrest that's attached to Exhibit "O," and Exhibit "P," Mrs. Gilleylen Direct Examination.

33. Petitioners attorney let the state prosecute with the Affidavit statement stating on thing, and the testimony of the states only witness saying another thing. Please read Exhibit "P." She stated **"she thought."**

34. Please read Dr. Rago Report, February 24, 1992, Exhibit "M." Please read Defendants version of the alleged offense. Petitioner "denies that he committed any offense." "He indicated that he was stopped by Chief William Latin of the Prescott Police Department on January 3, 1992. Mr. Hayden stated that the Chief of Police told him that "This was a trumped up charge and he handcuffed me and took me to jail." Please read Dr. Rago summary of legal questions. He states "in fact he denies that he did anything wrong." What am I suppose to do perjure myself again and tell a lie and say I did? If a person is not guilty whatelse can you say or do?

35. Neither Dr. Simon in 1989, the examining doctor in 1989, or Dr. Rago in 1992, never appeared, or were not summon to be at any of petitioners court hearing. *See Turner v. State,* 224 Ark. 505, 275 S.W.2d 24 (1955).

36. Petitioner contends his attorney did not discuss either of the doctors report with petitioner. There is some information in Dr. Rago report dated February 24, 1992 that is helpful to petitioner. Exhibit "M." Please read *Clinical Evaluation and Behavioral Observations.* The information in petitioners *Clinical Evaluation and Behavioral Observations.* The answer to petitioners questions will support his Rule 37 petition. Please read.

37. Petitioner attorney would not file petitioners appeal from the municipal court of Judge Duncan Culpepper finding petitioner guilty in municipal court. Petitioner attorney would not appeal the municipal court judges decision of

being found guilty into circuit court for him. He would not appeal petitioner guilty verdict by Judge Culpepper from municipal court on April 1992 into circuit court before petitioner revocation trial, and on May 7, 1992 petitioner Revocation trial was held and was revoked and he was sentenced to five years in the Arkansas department of Corrections on May 7, 1992.

38. Petitioner served 19 months, and 8 days on a five year sentence in the Arkansas Department of Corrections for some allegations petitioner did not commit.

39. All of petitioners civil rights and alots of his amendments have been violated. Mr. Walker, you mentioned them, would you please?

40. Please help me with the Rule 37 petition.

41. Please mention how the courts is denying me and my attorney the right to file appeals and how they granted you a re-hearing but they would not grant you permission to file your brief. All of that is in violation to me when a person should have the right to appeal any decision the courts, or social security or anybody decide against them if they do not like the decision rendered. Let them know that they are in violations and especially without conducting a hearing.

42. Look up Ark Code Ann section 5-71-207 and Ark Code Ann section 5-71-209 and see if the state voluntarily gives a defendant a defense for the charge.

43. Mr. Hale file a motion stating he was going to raise mental illness as a defense in 1989, but he never used the obvious defense "not Guilty by reason of insanity." He never advised petitioner to plead not guilty by reason of insanity.

44. In 1992, my charges were Disorderly Conduct. Ark Code Ann Section 5-71-207, and Harassing Communication Ark. Code Ann section 5-71-209 with only one witness for the state, and no other witnesses, and no tape recorder, makes it Mrs. Gilleylen word against petitioner. Since petitioner contend he was not guilty without perjuring himself again, as you may have read in both of the examining doctors report, all petitioner could do was deny, or admit he had did no wrong. What was it for petitioner to do? Tell a lie and say he did commit the allegation and that he was guilty when actually he was not guilty and perjure himself again. Whom do you thing the court system was going to believe, me, a black man, or the white female lady?

45. Petitioners attorney caused petitioner to perjure himself in 1989, the allegation Terroristic Threatening. By pleading guilty to a charge he did not commit, petitioner contends he will never perjure himself again, and petitioner regrets pleading guilty to a charge he did not commit in 1989.

46. Petitioner believes with illegal arrest, petitioner was arrested in 1989 and in 1992 without a arrest warrant. Illegal prosecution, petitioner contends he was innocent in 1989, and in 1992. And petitioner served 19 months, and 8

days in Ark. Dept. of Correction for some allegations petitioner did not commit.

47. Petitioner believes the way the courts obtained their conviction, and was promised a different sentence than what petitioner received, and the help of his attorney inducing him and causing petitioner to perjure himself. Petitioner believes he should be granted every right to set his conviction aside, and clear his name, and the record, and vindicate the charges.

48. Petitioner is now left a second class citizen, and a convicted felony, with a prison record, and should not be since petitioner attorney file motion stating "he plan to raise mental defect or mental illness as a defense in 1989." Then the obvious plea to the judge should have been not guilty by reason of insanity in 1989, or in April 1992 in petitioner municipal court trial for the two misdemeanor allegations, or in petitioner revocation trial. The purpose of the defense is to get you out of trouble, or for a lessor sentence or fine, or for probation. Petitioner certainly did not want to go to prison.

49. Petitioner believe throughout the entire illegal court preceeding and the ineffective assistance of counseling by his then attorney, Mr. Hale is what caused or led do petitioners convictions. Petitioner believe that throughout the preceeding all of his civil rights, and most of his amendment has been violated.

50. Petitioner contend by the Arkansas Supreme Court denying Mr. Alvin Schay Belated

Application for Appeal is a violation to petitioners right to file an appeal.

51. Petitioner believes everybody should have the right to file an appeal. The Arkansas Supreme Court simply denied Mr. Alvin Schay Belated application to file an appeal with no reason given. Read Exhibit "G."

52. Petitioner believe that if granted an opportunity, through a hearing, by petitioner and his attorney, proof could be established in proving petitioner guilty, or innocent, if it requires ordering all accusers present. And everyone. Including petitioner be required to be **polygraph** tested.

53. Petitioner believe that he serve the right to vindicate the allegations in 1989, and in 1992, and the prison records solely based on the **meirts** in petitioners documents regarding the merits in the matter.

54. I hired Mr. Alvin Schay and Mr. Jack Kearney to file me an appeal on November 6, 1997. They filed a belated application for appeal May 8, 1998. Even though it was a belated application for appeal Mr. Schay stated on page 2, paragraph 5, "This application is timely under Rule 2(e) of the Arkansas Rules of Appellate Procedure-Criminal, in that it is being filed within 18 months of Judge Purifoy's dismissal of Hayden's petitions for Rule 37, and to correct a sentence imposed in an illegal manner" in denying Hayden's appeal without a reason. Hayden believe the permission to file a belated appeal should have been granted. That is denial of a person right

to file an appeal. It was still within the 18 months statute for filing a belated application for appeal.

55. Hayden hired Mr. Harold Madden on July 16, 1998 to file a Habeas Corpus Form 2254 petition. But nothing was filed until December 18, 1998, and Mr. Madden let Mr. Hayden Habeas Corpus form 2254 be dismissed with several orders pending, or un-answered to Magistrate Judge Bobby E. Shepherd orders.

56. Hayden then hired Mr. Horace A. Walker to file an appeal to the United States Court of Appeals for the Eighth Circuit on April 30, 1999. The Eighth Circuit granted Mr. Walker a re-hearing, but they did not grant Mr. Walker permission to file his brief. The Eighth Circuit dismissed Hayden's petitions stating it had no merits **on August 4, 1999.**

57. While we thought Mr. Walker was waiting for permission and the Deadline to prepare his brief and file it. Not allowing Mr. Walker to file his appeals and file his brief is violating a persons right to file an appeal. Mr. Walker answered Magistrate Judge Bobby E. Shepherd orders. And I believe if the Eighth Circuit court of appeals had granted Mr. Walker the permission to file his brief after they had granted Mr. Walker a re-hearing. I believe Mr. Walker would have address the merits in Hayden's petition in his brief, before letting Hayden's case be dismissed summarily based on **no MERITS.**

HAYDEN BELIEVES HIS RULE 37 PETITION DESERVES MERITS FOR THE FOLLOWING REASON: HAYDEN PRAY THE COURTS WILL GRANT HIM PERMISSION FOR A WRIT OF CERTIORARI FOR THE FOLLOWING REASONS:

MERITS OF THE RULE 37 PETITION

PROCEDURE OF THE COURT
REGULATING PROFESSIONAL CONDUCT
OF ATTORNEYS AT LAW

1. RULE 1.1 COMPETENCE: The procedure of the court regulating professionals conduct of attorneys at law clearly states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably nccessary for the representation, petitioner contend his attorney never came to jail to see him to discuss, advice or counsel him in any of his allegations. Therefore, petitioners attorney lacked thoroughness and preparations."

2. RULE 1.2 SCOPE OF REPRESENTATION states (a) a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraph (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abiqe by the clients' decision after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. Petitioner contend he never saw his attorney until his day in court so his attorney could not abide by any decision of

petitioners, as to a plea to be entered it was the duty of the petitioners attorney to discuss plea arraignment with him rather than Sheriff Abb Morman.

3. RULE 1.2(d) states, "A lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client, and may counsel or assist a client to make a good faith effort to determine the validity, scope, meanings or application of the law. Petitioners attorney induced petitioner to perjure himself by signing the "plea and waiver form" and helped induced petitioner into pleading guilty to a charge in 1989, when petitioner contend he was not guilty in 1989, and in 1992, and should not have been revoked on May 7, 1992 and sentence to prison. *Purtle vs Committee on Professional Conduct,* 317 Ark. 278, S.W.2d (1994). Cited: *Harrison v. Charles E. Davis & Assocs.,* 310 Ark. 104, 835 S.W.2d 284 (1992).

4. RULE 1.3 DILIGENCE states "a lawyer shall act with reasonable diligence and promptness in representing a client." The law clearly states, "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take what ever lawful and ethical measures are required, required to vindicate a clients cause or endeavor. A lawyer should act with commitment and dedication to the interest of the client." The simple and easiest way to have vindicated petitioners allegations was for attorney Mr. Hale to advise petitioner guilty or not in 1989, and in 1992, or

on petitioners revocation trial since the record clearly establishes that petitioner is mentally ill. The best and obvious way to have vindicated petitioner of said allegations in 1989, and in 1992, was to advise petitioner to plead not guilty by Reason of Insanity. Especially since Mr. Hale had file a motion to raise mental disease or illness as a defense. That is a violation of Rule 1.3 to petitioner, *McDonald v. State,* 42 Ark. App. 37, 852 S.W.2d 833 (1933).

5. RULE 1.4 COMMUNICATION. The rule clearly states, "(a) a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Petitioner contend his lawyer never advise, discussed, or counsel him about anything. That is a violation of Rule 1.4. Read *Colvin v. Committee on Professional Conduct,* 305 Ark., 239, 806 S.W.2d 385 (1991); *Harrison v. Charles E. Davis & Assocs.,* 310 Ark. 104, 835 S.W.2d 484 (1992). Petitioners attorney withheld all documents from petitioner.

6. RULE 1.14 CLIENT UNDER A DISABILITY. The rule states "When a clients ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Petitioner contend his attorney did not do that, that is a violation of Rule 1.14 petitioner contends his

attorney did not make it known to the courts about petitioner mental disability.

7. RULE 2.1 COUNSELOR: ADVISOR: The rule clearly states. "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to client's situation. Petitioner contends he never saw his attorney until his day in court. Therefore, his attorney never acted as counselor or advisor." That is a violation of Rule 2.1 cited: *Drayton v. State,* 23 Ark. App. 1, 740 S.W.2d 147 (1987).

8. RULE 3.2 EXPEDITING LITIGATION. The rule clearly states. "A lawyer shall make reasonable efforts to expedite litigations consistent with the interest of the client." Petitioners attorney could not have expedited litigation and let petitioner serve over six months in jail before a bond was set in 1989, and over six months in jail in 1992, for some allegations he did not commit," and then let petitioner serve 19 months, and 8 days in the Arkansas Department of Corrections for some allegations he did not commit. That is a violation of Rule 3.2.

9. RULE 8.4 MISCONDUCT. The rule clearly states. "It is a professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Petitioner contends his attorney help petitioner to fraud the courts by inducing petitioner into pleading guilty, or misrepresentation. Petitioner believes because of the misconduct on his attorney behalf played a pivotal part in helping the court obtain their conviction. That is a violation of Rule 8.4 Misconduct. Petitioner would like for you to please read petitioners Rule 37 petition, which is Exhibit "B." Please read on page 4, paragraph No. 17, it simply states, "That your petitioner was denied the effective assistance of counsel for the following reasons. Please read the numbers 1-36 reasons listed.